REMARKS

The following remarks are made in response to the Office Action mailed November 18, 2004. Claims 1-27 were rejected. With this Response, claims 1-27 have been amended. Claims 1-27 remain pending in the application and are presented for reconsideration and allowance.

Drawing Objections

Regarding the objection to reference character "32" in Figure 1 that points to "input/output queue with priority scheduler", Applicant has amended Figure 1 to replace reference character "32" with reference character "30" making the drawing consistent with the specification which refers to "input/output queue with priority scheduler" with reference character 30. For example, see Applicant's specification at page 4, line 22; and at page 6, lines 5,7, and 12. Moreover, with the above-described change of reference character "32" to "30", the original occurrence of reference character "30" in Figure 1 is redundant as reference character "14" already points to the element "throughput resource". Accordingly, the now redundant reference character "30" has been deleted.

Regarding the objection to "queve" in Figure 3, Applicant has amended Figure 3 to change "queve" to "queue".

With these changes, Applicant believes that the objections to the drawings have been overcome, and respectfully requests withdrawal of the objections and approval of the drawings.

In the Specification

Applicant has amended the specification to change "monitor 360" to "monitor 350", thereby alleviating the objection to the specification. Withdrawal of the objection is respectfully requested.

Claim Rejections under 35 U.S.C. § 112

In the Office Action, claims 1-10, 13-15, 17-20, 22, and 25-26 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Applicants have amended claim 1 so that "the resource request" refers to "the first resource request", thereby alleviating concerns regarding the meaning of "the resource request". Applicants' claim 1 does not require designating whether an order of arrival between the first resource request and the second resource request affects the processing of the request. Applicants claim 1 does specify that the request that has a monetary designation is processed before another request having a non-monetary designation. The request with the monetary designation could be the first request to arrive or the second request to arrive. In either case, whether first or second to arrive, the request with the monetary designation will be processed prior to the request with the non-monetary designation. Accordingly, Applicant respectfully submits that claim 1 is definite in its currently amended form.

Applicant has amended claims 13-15, 17-20, 22, and 25-26 so that in each case, the term "system" in the dependent claims is preceded by additional terms so that the recitation in each dependent claim regarding a "system" directly mirrors the recitation of a "system" in the respective independent claim. For example, claims 13-15 have been amended to recite "the priority resource request handling system" instead of "the system". Claims 17-20 have been amended to recite "the pay for performance prioritized internet communication system" instead of "the system". Claim 22 has been amended to recite "the monetary prioritized network communication system" instead of "the system". Finally, claims 25-26 have been amended to recite "the computer-readable medium" instead of "the medium".

For these reasons, Applicant believes that the concerns regarding indefiniteness have been alleviated. Accordingly, Applicant respectfully requests withdrawal of the Section 112 rejection regarding claims 1-10, 13-15, 17-20, 22, and 25-26.

Claim Rejections under 35 U.S.C. § 103

In the Office Action, claims 1-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Broder et al. U.S. Patent No. 5,991,808 (herein Broder) in view of Toyouchi et al. U.S. Patent No. 6,006,251 (herein Toyouchi).

a. **Independent Claim 1**

Regarding independent claim 1 directed to a method of prioritizing computer resource requests, Broder fails to teach processing a request with a monetary priority designation first

(as admitted in the Office Action) or prior to a request with a non-monetary priority designation, as claimed by Applicants.

Broder is directed to a client configured to select a server with a low load from a bank of servers. In particular, Broder discloses that "each server includes a first-in-first-out queue (FIFO) queue 50-M for queueing each service request". See Broder at Column 4, lines 25-27. A first-in-first-out queue operates substantially differently from Applicant's monetary priority scheduling queue, which does not process resource requests by the order received by the queue. Instead, in Applicant's claimed invention, resource requests having a monetary priority designation are processed prior to resource request having a non-monetary priority designation.

Moreover, in Broder, any fees paid by a client 14 to ensure priority service is related to seeking a server from a bank of servers that has a low load by querying a limited number (e.g., two or three) of randomly selected servers among the full bank of servers. This priority service does not place the client 14 higher in a priority scheduling queue of a throughput resource, as claimed by Applicant, but merely sorts through servers in attempt to find a low-load server.

For these reasons, Broder fails to disclose **granting a monetary priority queue designation to a preferred subscriber** for preferential placement in a monetary priority scheduling queue in a throughput resource **upon payment for the monetary priority queue designation** by the preferred subscriber, as claimed by Applicant. Broder also fails to disclose **processing, via a monetary priority scheduling queue, a first resource request from the preferred subscriber prior to processing a second resource request from the non-preferred subscriber** based on the monetary priority queue designation having a higher priority for processing than the non-monetary priority queue designation, as claimed by Applicant.

Toyouchi does not provide what Broder lacks. Toyouchi is directed to a service providing system in which one parameter of acquiring information by an end user includes "a quality of a request" in which information retrievals with payment may be treated with a higher priority degree than information retrievals without payment. See Toyouchi at Column 11, lines 25-39. However, other parameters besides "quality" affect priority order processing,

such as quantity (See Column 11, lines 40-45), conditions (Column 8, lines 47-61), discriminating information (See Column 9, lines 37-49), etc. which can all change the priority order of processing. Accordingly, there is no assurance of higher priority for a request of information retrieval with payment than a request for information retrieval without payment, since so many other parameters affect priority order of processing. Moreover, other factors of the "quality" parameter (see Column 8, lines 22-26) affect priority order of processing.

Of particular interest, there is no indication in Toyouchi that the "payment" is made specifically for a preferential queue designation but apparently the payment is made to obtain the information. Applicants method directly grants a preferential queue designation to a subscriber who pays for higher priority treatment, to be processing before non-paying subscribers. In Applicants method, the preferential treatment is independent of whether the request is made for information retrieval or for something else such as purchases, email transmission, file transfer etc since the payment is for a queue designation and not for information retrieval.

Accordingly, Toyouchi does not disclose **granting a monetary priority queue designation to a preferred subscriber** for preferential placement in a monetary priority scheduling queue in a throughput resource **upon payment for the monetary priority queue designation by the preferred subscriber**, as claimed by Applicant.

Finally, in regards to higher priority order of processing for "quality" parameters, Toyouchi in the above cited passages does not indicate how a higher priority processing would be performed, and specifically does not disclose that a higher priority processing necessarily means that higher priority requests are handled before lower priority requests. For example, higher priority processing as taught by Broder, as described above, relates to the number of servers that are queried by the client to identify a low load server to process the request from the client. Other ways of providing higher priority are also possible such as selecting a type of server for processing, providing personal assistance to process the request, etc.

Accordingly, Toyouchi also fails to disclose **processing, via a monetary priority scheduling queue, a first resource request from the preferred subscriber prior to processing a second resource request** from the non-preferred subscriber **based on the**

monetary priority queue designation having a higher priority for processing than the non-monetary priority queue designation

Therefore, Toyouchi fails to cure the deficiencies of Broder.

For these reasons, neither Broder nor Toyouchi, alone or in combination, disclose or suggest or make obvious Applicant's independent claim 1. Accordingly, Applicant's believe that independent claim 1 is allowable over Broder and/or Toyouchi. Claims 2-10 are believed to be allowable based on their dependency from independent claim 1.

b. Independent claim 24

For substantially the same reasons as presented for patentability of claim 1, Broder and Toyouchi fail to disclose Applicant's amended independent claim 24 which is directed to a computer readable medium having computer-executable instructions for performing a method of monetarily prioritizing computer resource requests-- the method including substantially the same limitations as claim 1. For these reasons, Broder and Toyouchi fail to teach or suggest amended independent claim 24, and therefore Applicant's amended independent claim 24 is patentable and allowable over Broder and Toyouchi. Claims 25-26 are believed to be allowable as well based on their dependency from claim 24.

c. Independent claim 11

For substantially the same reasons presented for the patentability of claim 1, Applicants' independent claim 11 directed to a method of handling job requests on a monetary priority basis is not taught or suggested by Broder and/or Toyouchi. In particular, neither Broder nor Toyouchi disclose establishing a priority **queue** designation for each subscriber **based on a relationship of each subscriber with a throughput resource wherein a monetary priority queue designation is obtained by payment from subscribers** and wherein a job request for each subscriber is scheduled in a queue with the job requests from each subscriber having a monetary priority queue designation being performed prior to job requests from each subscriber having a non-monetary priority designation, as claimed by Applicant. Accordingly, one could not combine Broder in view of Toyouchi and arrive at the invention of independent claim 11.

For these reasons, neither Broder nor Toyouchi, alone or in combination, disclose or suggest or make obvious Applicant's independent claim 11. Accordingly, Applicant's believe that independent claim 11 is allowable over Broder and/or Toyouchi.

d. Independent claim 27

For substantially the same reasons as presented for patentability of claim 11, Broder and Toyouchi fail to disclose Applicant's amended independent claim 27 which is directed to a computer readable medium having computer-executable instructions for performing a method of handling resource requests on a monetary priority basis-- the method including substantially the same limitations as claim 11. For these reasons, Broder and Toyouchi fail to teach or suggest amended independent claim 27, and therefore Applicant's amended independent claim 27 is patentable and allowable over Broder and Toyouchi.

e. Independent claim 12

For substantially the same reasons presented for the patentability of claim 1, Applicants' independent claim 12 directed to a priority resource request handling system is not taught or suggested by Broder and/or Toyouchi. In particular, neither Broder nor Toyouchi disclose a throughput resource having a **priority scheduling queue** configured for handling resource requests of the first subscriber prior to handling resource requests of the second subscribers based on their respective monetary priority queue designations, **wherein the first monetary priority queue designation is obtained via payment by the first subscriber to the throughput resource to gain higher priority processing relative to the second monetary priority queue designation,** as claimed by Applicant. Instead, as previously explained, Broder has a first-in-first-out queue for its servers, and a server load-based priority system – not a queue based on monetary priority, while Toyouchi does not have a priority queue designation for queue scheduling based on payment by a subscriber for that queue designation. Accordingly, one could not combine Broder in view of Toyouchi and arrive at the invention of independent claim 12.

For these reasons, neither Broder nor Toyouchi, alone or in combination, disclose or suggest or make obvious Applicant's independent claim 12. Accordingly, Applicant's

believe that independent claim 12 is allowable over Broder and/or Toyouchi. Claims 13-15 are believed to be allowable based on their dependency from independent claim 12.

f. Independent Claim 16

For substantially the same reasons presented for the patentability of claim 1, Applicants' independent claim 16 directed to a pay for performance prioritized internet communication system is not taught or suggested by Broder and/or Toyouchi. In particular, neither Broder nor Toyouchi disclose an internet service provider configured to act as a throughput resource including a **queue** for processing requests from the preferred web browser **prior to** processing other requests in the queue that lack a monetary priority queue designation, **wherein the preferred web browser obtained the monetary priority queue designation via payment to the internet service provider to gain preferential processing in the queue**, as claimed by Applicant. Among other things, both Broder and Toyouchi lack a system including payment specifically for a preferential queue designation. Accordingly, one could not combine Broder in view of Toyouchi and arrive at the invention of independent claim 16.

For these reasons, neither Broder nor Toyouchi, alone or in combination, disclose or suggest or make obvious Applicant's independent claim 16. Accordingly, Applicant's believe that independent claim 16 is allowable over Broder and/or Toyouchi. Claims 17-20 and 23 are believed to be allowable based on their dependency from independent claim 16.

g. Independent claim 21

For substantially the same reasons presented for the patentability of claim 1, Applicants' independent claim 21 directed to a priority resource request handling system is not taught or suggested by Broder and/or Toyouchi. In particular, neither Broder nor Toyouchi disclose a system including, among other things, **a queue configured for prioritizing computer resource requests on a monetary priority basis using the monetary priority queue designations of the subscribers, wherein the monetary priority queue designations are obtained via payment by the subscribers,** as claimed by Applicant. Instead, as previously explained, Broder has a first-in-first-out queue for its servers, and a server load-based priority

system – not a queue based on monetary priority, while Toyouchi does not have a priority queue designation for queue scheduling based on payment by a subscriber for that queue designation. Accordingly, one could not combine Broder in view of Toyouchi and arrive at the invention of independent claim 21.

For these reasons, neither Broder nor Toyouchi, alone or in combination, disclose or suggest or make obvious Applicant's independent claim 21. Accordingly, Applicant's believe that independent claim 21 is allowable over Broder and/or Toyouchi. Claim 22 is believed to be allowable based on its dependency from independent claim 21.

In light of the above, Applicants respectfully request withdrawal of the rejection of claims 1-20 based on Broder and Toyouchi under 35 U.S.C. §103(a).

CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 1-27 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 1-27 is respectfully requested.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to either James R. McDaniel at Telephone No. (208) 396-4095, Facsimile No. (208) 396-3958 or Paul S. Grunzweig at Telephone No. (612) 767-2504, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 18th day of February, 2005.

By Paul S. Grunzweig
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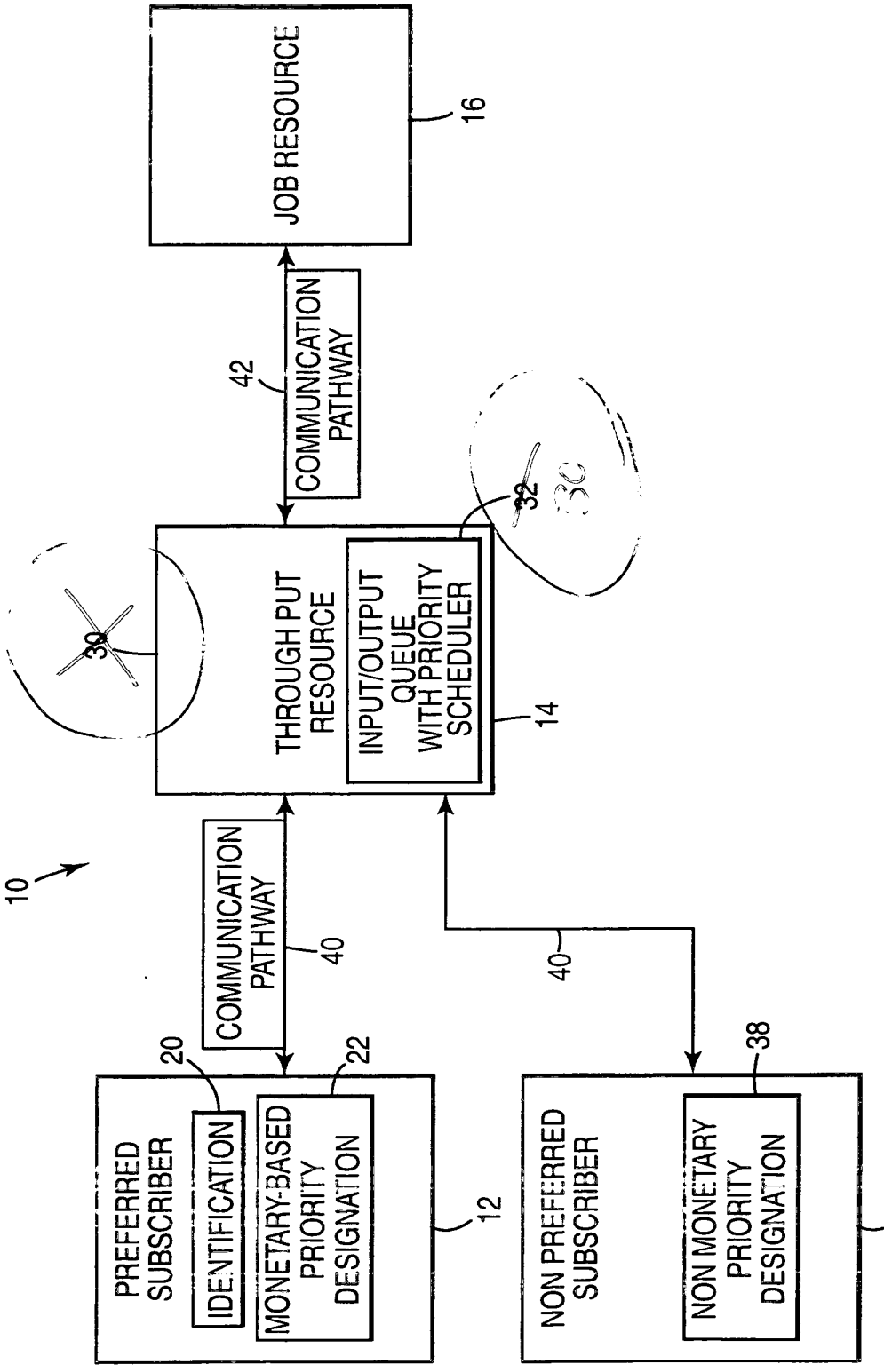

Fig. 1

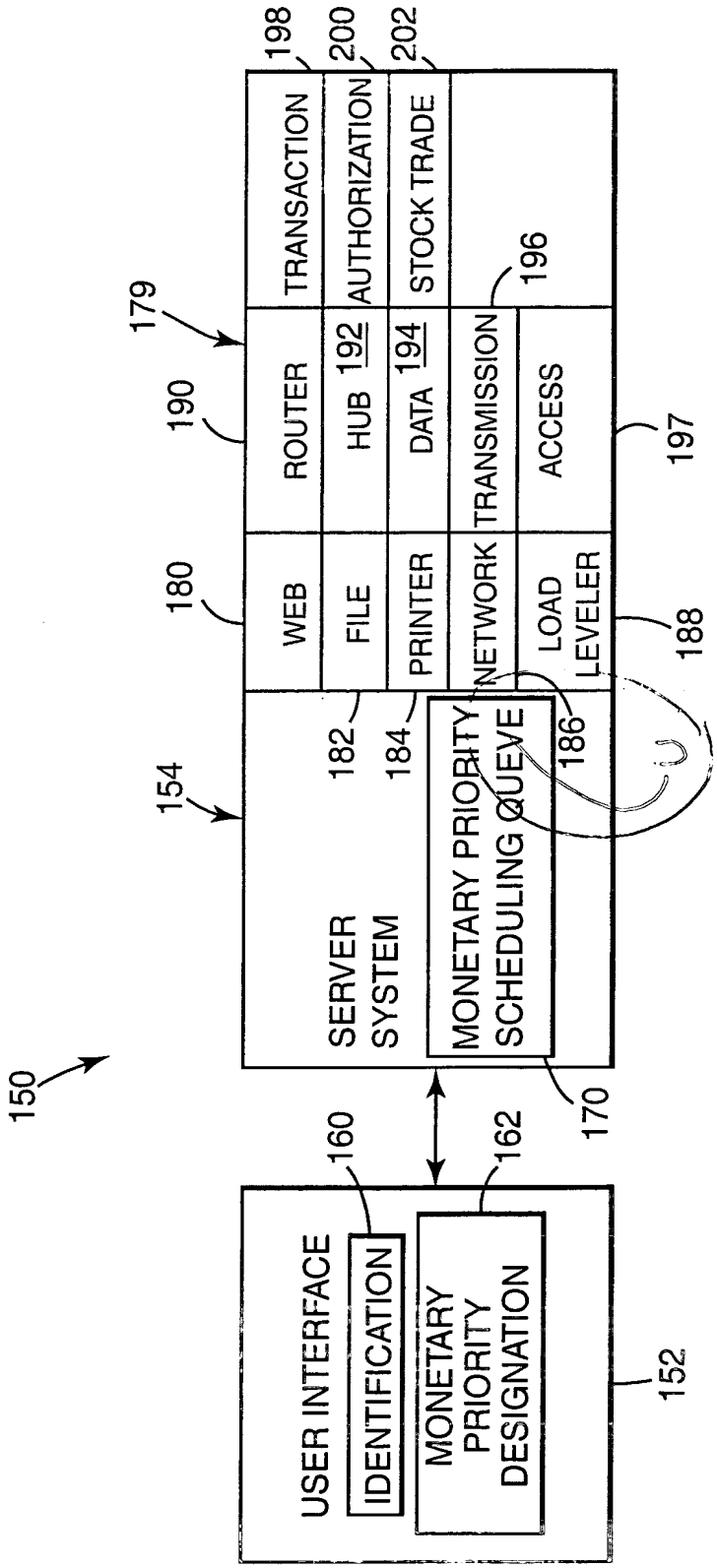

Fig. 3